

Below is a Memorandum Decision of
the Court.




Mary Jo Heston
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re:

BELGICA DARGELIS CONNELL,
Debtor.

Case No. 19-43726

**MEMORANDUM DECISION ON
OBJECTION TO CONFIRMATION OF
CHAPTER 13 PLAN OBJECTING TO
DEBTOR'S HOMESTEAD EXEMPTION**

This matter came before the Court on January 23, 2020, on the Chapter 13 Trustee's ("Trustee") Objection to Confirmation of Chapter 13 Plan, ECF No. 19, objecting to, among other things, Belgica Dargelis Connell's ("Debtor") homestead exemption of \$125,000 in real property located at 8318 Leona Way SW, Tacoma, WA 98499-2650 ("Property"). At that hearing, the Debtor argued she was entitled to a homestead exemption on her Property under Washington State law. The Trustee contested her homestead exemption because she did not currently reside on the Property and because she had the ability to sell the Property in the future. The Trustee also confirmed no more discovery was needed on this issue. The Court took this matter

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1 under advisement. Based on the record and counsels' arguments, the Court makes the
2 following findings of facts and conclusions of law.

3 **BACKGROUND**

4 The facts in this matter are undisputed.¹ The Debtor filed her bankruptcy petition on
5 November 21, 2019. Prior to filing bankruptcy, on September 26, 2019, the Debtor executed
6 both a homestead declaration in the Property and a declaration of abandonment for another
7 property. Both declarations were recorded with the Pierce County Auditor under Recording
8 Numbers 201909260859 and 201909260856, respectively. In her petition, the Debtor reported
9 her current address as other than the Property. She does not currently live at the Property,
10 instead, according to her 341 testimony, tenants currently occupy the Property.

11 On January 7, 2020, the Trustee filed an Objection to Confirmation of Chapter 13 Plan
12 objecting to, among other things, the Debtor's homestead exemption of \$125,000 in the
13 Property. The Debtor responded and filed a supporting declaration on January 15, 2020. In
14 her declaration, the Debtor declared she purchased the Property in 2007 and it was the only
15 place she's ever considered home. The Debtor is a single mother and she began experiencing
16 financial hardship around 2014 after her sons got addicted to drugs. In 2015, she had to quit
17 her job to move to Portland, Oregon "to stop enabling [her] sons' destructive behaviors and
18 addi[ctions]." After she and her sons moved out, she rented the Property to a tenant.

20 In 2016, the Debtor was healthier financially and she, her eldest son, and that son's
21 girlfriend moved back to the Property. Her eldest son became physically abusive and she had
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25 ¹ At the hearing, the Court asked the Trustee's counsel whether the Trustee wanted to conduct more discovery.
He stated the Trustee did not.

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1 to quit her job and move again in 2017. Upon doing so, she rented the Property again to another
2 tenant so she could “reset [by] moving to Canada briefly to live with [her] brother” and learn
3 French at College Platon in Montreal.

4 While in Montreal, the Debtor learned her eldest son died from a drug overdose. She
5 returned to Washington, took her son’s ashes to Panama, and stayed with her mother there
6 until November 2018. During or after November 2018, the Debtor moved back to Washington
7 and rented a room from a friend. After returning, she experienced more financial hardships. In
8 September 2019, she obtained legal counsel.

9 The Court held a hearing on January 23, 2020, on the Trustee’s Objection to
10 Confirmation of Chapter 13 Plan. The Trustee argued the Debtor’s homestead exemption in
11 the Property was invalid. The Debtor disagreed. The Court took this matter under advisement.
12

DISCUSSION

13 The issues before the Court are whether the Debtor has a valid homestead exemption
14 in the Property, and whether the Debtor’s homestead exemption in the Property is vitiated by
15 the mere possibility that the Debtor may later sell it. Noting the pivotal factor is the Debtor’s
16 intent and based on the findings and conclusions set forth below, the Court holds her homestead
17 exemption is valid and overrules the Trustee’s objection. Eviscerating the Debtor’s homestead
18 exemption with a mere possibility of selling the property would be contrary to established law
19 and would lead to unintended consequences.
20

21 “Washington has not ‘opted out’ of the federal exemption scheme. Thus, a debtor
22 domiciled in Washington may select either the exemptions afforded by Washington law, or the
23 federal exemption scheme.” 11 U.S.C. § 522(b); *In re Jefferies*, 468 B.R. 373, 378 (9th Cir.
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1 BAP 2012) (citing 4 Henry Somers & Alan Resnick eds., *Collier on Bankruptcy* ¶ 522.02 (15th
2 ed. rev. 2009)). Here, the Debtor elected Washington exemptions.

3 Under Washington law, homestead exemption statutes are favored and should be
4 liberally construed. *Jefferies*, 468 B.R. at 380; *Pinebrook Homeowners Ass'n v. Owen*, 48 Wn.
5 App. 424, 427, 739 P.2d 110, 113 (1987). “In Washington, a ‘homestead consists of real or
6 personal property that the owner uses as a residence’ or ‘the dwelling house or the mobile home
7 in which the owner resides or *intends to reside* Property included in the homestead must
8 be actually intended or used as the principal home for the owner.” *Jefferies*, 468 B.R. at 380
9 (citing Wash. Rev. Code (“RCW”) § 6.13.010(1)) (emphasis added). The validity of the claimed
10 exemption is controlled by the applicable state law. *In re Kelley*, 300 B.R. 11, 16 (9th Cir. BAP
11 2003).

12 Washington has two methods for establishing a homestead. *In re Gitts*, 116 B.R. 174,
13 178 (9th Cir. BAP 1990), *aff'd & adopted*, 927 F.2d 1109 (9th Cir. 1991); *In re Wilson*, 341 B.R.
14 21, 25 (9th Cir. BAP 2006). First, the homestead exemption automatically protects property
15 occupied as a principal residence. RCW § 6.13.040; *Gitts*, 116 B.R. at 178; *Wilson*, 341 B.R.
16 at 25-26. Second, if an owner cannot show occupancy and use, the owner may claim a
17 homestead for exemption purposes by declaration. *Gitts*, 116 B.R. at 178; *Wilson*, 341 B.R. at
18 26. To establish a valid declared homestead exemption, an owner must intend to reside on the
19 property, record a declaration of homestead, and record a declaration of abandonment of any
20 automatic homestead or any existing declared homestead. *Gitts*, 116 B.R. at 178; *Wilson*, 341
21 B.R. at 25-26. Bankruptcy exemptions are fixed on “the date of the filing of the [bankruptcy]
22 petition.” *White v. Stump*, 266 U.S. 310, 313 (1924); *Wilson v. Rigby*, 909 F.3d 306, 308 (9th
23 Cir. 2018); *In re Jacobson*, 676 F.3d 1193, 1199 (9th Cir. 2012) (explaining the “snapshot” rule’
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[where] bankruptcy exemptions are fixed at the time of the bankruptcy petition."). A valid declared Washington homestead exemption depends on the time the declaration is recorded. *Wilson*, 341 B.R. at 26. A homestead declaration is valid if it is filed before the bankruptcy petition is filed and if it "speak[s] the truth" so it reflects the declarant's intent. RCW § 6.13.040; *Wilson*, 341 B.R. at 27. Intent to reside at a location becomes the pivotal issue. *Wilson*, 341 B.R. at 26.

Determining a debtor's intent in claiming a homestead exemption is a question of fact. *Kelley*, 300 B.R. at 16. Courts have considered the following factors to determine a debtor's intent to reside at a homestead: (a) whether a debtor took affirmative steps to return to the property or establish or retain ownership, *Wilson*, 341 B.R. at 27; *cf. Bank of Anacortes v. Cook*, 10 Wn. App. 391, 397-98, 517 P.2d 633, 637 (1974) (finding that a homestead declaration was invalid when the claimant vacated the premises with no intention of returning prior to filing the declaration); (b) whether a debtor could reside at the property in the future, see *Wilson*, 341 B.R. at 27; (c) the probability of return to the property, see *Wilson*, 341 B.R. at 27; and, (d) whether the homestead declaration was in "good faith or was it done as a mere subterfuge with no honest intention of using it as a home[,"] see *Clark v. Davis*, 37 Wn.2d 850, 856-57, 226 P.2d 904, 907-08 (1951). Even a party's intent to reside at the premises, when the property was ordered to be sold at the time the homestead declaration is filed, may not invalidate a homestead declaration. See *Clark v. Davis*, 37 Wn.2d at 856-57 (ruling the plaintiff's "sincere desire to provide shelter for her family," a good faith intent to reside at the premises as a home and doing so "at the time [the plaintiff] filed her declaration of homestead" created a valid homestead declaration).

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1 Here, the Debtor did not occupy the Property on the petition date. Consequently, she
2 does not qualify for Washington's automatic homestead exemption.

3 Based on the record, however, the Court concludes that the Debtor satisfied the three
4 requirements for filing a homestead declaration in *Gitts* and *Wilson*: 1) she has expressed good
5 faith intent to live at her Property in the future; 2) prior to filing bankruptcy on November 21,
6 2019, she recorded a homestead declaration on September 26, 2019; and 3) she also filed a
7 declaration of abandonment on other real property on September 26, 2019, despite never living
8 there.

9 Furthermore, the Debtor has a history that corroborates her intent to return to the
10 Property. Specifically, after residing at the Property, the Debtor experienced financial hardship
11 after she lost her son. In 2015, the Debtor vacated the Property. Rather than selling the
12 Property, the Debtor rented it to tenants while she moved to Portland for work, where she lived
13 in a single room to reduce her expenses. When the Debtor's financial condition improved, she
14 returned to her home in 2016.

16 As argued by the Debtor, this case differs from *Bank of Anacortes*, 10 Wn. App. 391, 517
17 P.2d 633. In *Bank of Anacortes*, the Washington Supreme Court held a homestead declaration
18 invalid when the claimant previously attempted to sell his home and vacated the premises
19 without intending to return prior to filing the declaration. *Bank of Anacortes*, 10 Wn. App. at
20 397-98, 517 P.2d at 637. Here, the Debtor never listed her home for sale. She lived at the
21 Property before, vacated it for financial issues, returned to the Property, then moved again, and
22 currently states she intends to return once she is financially sound again. Her current and
23 repeatedly stated intent to return to the Property coupled with her recorded prepetition
24 homestead declaration also are affirmative steps to retaining ownership of the Property.

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1 In sum, the Debtor's current and prior actions show she can reside at the Property in the
2 future and that there is a good probability she will do so. See *Wilson*, 341 B.R. at 27.

3 Contrary to the Trustee's argument, the Debtor's homestead exemption is not vitiated by
4 the mere possibility that the Debtor may later sell the Property. The Trustee did not present
5 any evidence that the Debtor may be planning to sell the Property despite the Trustee's
6 opportunity to question the Debtor at the 341 Meeting, and his decision to not engage in more
7 discovery. In Washington, homestead exemption statutes are favored and should be liberally
8 construed. *Jefferies*, 468 B.R. at 380. Construing otherwise here would be inconsistent with
9 *Jeffries* because disallowing the Debtor's homestead exemption would require a narrow
10 interpretation of RCW § 6.13.010(1). This would disfavor Washington's established homestead
11 exemption law's plain language that specifically allows homestead exemptions in real property
12 intended as a home. See RCW § 6.13.010(1) ("The homestead consists of real or personal
13 property that the owner uses as a residence' or 'the dwelling house or the mobile home in which
14 the owner resides or *intends to reside . . .*"). *Robinson v. Shell Oil Co.*, 516 U.S. 337, 340
15 (1997); *State v. Cooper*, 176 Wn.2d 678, 683, 294 P.3d 704, 706 (Wash. 2013) (en banc).

16 Finally, agreeing with the Trustee would be contrary to the premise and facts of *Wilson*.
17 The homestead is determined by the snapshot rule as of the petition date. Here, all the Debtor
18 needs to show is a good faith intent to return to the residence, which she has shown as noted
19 above.

20 Based on the foregoing, the Court finds and concludes the Trustee's objection is
21 overruled and the Debtor's homestead exemption in the real property located at 8318 Leona
22 Way SW, Tacoma, WA 98499-2650 is allowed.
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24 // / End of Memorandum Decision // /
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